

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

GAYLIN ROSE,

Plaintiff,

vs.

BIRCH TREE HOLDINGS, LLC,
JOSHUA AYRES, TROY HELDERMAN,
DAMIEN DAVIS,
JERREL C. MCDONALD, SR.,
DANIEL TRAVIS, and
STACEY PHILLIPS,

Defendants.

CASE NO. 2:18-cv-00197-JTM

**DEFENDANT BIRCH TREE HOLDINGS, LLC'S MOTION FOR SUMMARY
JUDGMENT AND DESIGNATION OF EVIDENCE**

This Defendant, Birch Tree Holdings, LLC (“Birch Tree”), by counsel, pursuant to Federal Rule of Civil Procedure 56, hereby moves the Court to enter summary judgment in its favor. As set forth in the Memorandum which accompanies this Motion, there are no genuine issues of material fact, and this Defendant is entitled to judgment as a matter of law on several grounds.

First, there is no competent, admissible evidence to establish the essential “proximate cause” element of Plaintiff’s case (requiring complete dismissal of Birch Tree). Second, Plaintiff Gaylin Rose was negligent per se by failing to maintain and test the smoke alarms on the premises in violation of Indiana Code § 22-11-18-3.5. Third, the reasonable expense for counseling under the Child Wrongful Death Statute is limited to when the child would have reached 20 years old (and not for Plaintiff’s life expectancy). Fourth, the punitive damages claim must be dismissed as a matter of law because punitive damages claims are not permitted under the Child Wrongful Death

Act. Moreover, there is no evidence to support an award of punitive damages against Birch Tree for Plaintiff Gaylin Rose's individual claim.

In support of its Motion for Summary Judgment, this Defendant designates and relies upon the following:

1. Amended Complaint for Damages (DE 42);
2. Deposition of Joshua Ayres (pp. 6:3-10; 23:6-7; 24:11-16; 24:24 – 25:13; 28:1-7; 28:19-22; 31:2-16; 33:3-7; 34:2-18; 43:24 – 44:6; 52:4-16 and its Exhibit "1") attached as Exhibit "A";
3. Deposition of Joshua Ayres (Rule 30(B)(6)) (pp. 4:12-18) attached as Exhibit "B";
4. Deposition of Troy Helderman (pp. 7:2-5; 63:24 – 64:5, 16-18) attached as Exhibit "C";
5. Birch Tree Holdings, LLC's Answers to Plaintiff's First Set of Interrogatories, Nos. 2, 3, 11, and 14 attached as Exhibit "D";
6. Quit Claim Deed attached as Exhibit "E";
7. Deposition of Gaylin Rose (pp. 22:15 – 24:6; 24:13-20; 24:25 – 25:3; 25:9 – 26:9; 27:14 – 28:3; 28:10 – 29:18; 30:1-10; 40:15 – 41:4; 45:4-16; 49:11 – 50:10; 98:8-14; 101:10-16) attached as Exhibit "F";
8. Deposition of Michael Vergon (pp. 39:21 – 40:1; 58:22-24; 59:6-8; 60:11 – 61:5; 62:17-24; 69:4-10) attached as Exhibit "G";
9. Plaintiff's First Supplemental Responses to Defendants Birch Tree Holdings, LLC and Joshua Ayres' First Set of Interrogatories, Nos. 3 and 29 attached as Exhibit "H";
10. Declaration of Todd Hetrick attached as Exhibit "I" and its Exhibit "I-1";
11. Deposition of Todd Hetrick (pp. 49:6-9; 50:20 – 51:4; 53:6-13, 16-23) attached as Exhibit "J";
12. Defendants' Disclosure of Expert Testimony attached as Exhibit "K";
13. Memorandum in Support of Motion For Summary Judgment (filed concurrently).

WHEREFORE, this Defendant, Birch Tree Holdings, LLC, respectfully requests that the Court enter summary judgment in its favor (and for all other relief that is just and proper).

Respectfully submitted,

HUNT SUEDHOFF KEARNEY LLP

/s/ Jeremy D. Lemon

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/CM/ECF system which sent notification of such filing to the following:

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